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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,264	07/30/2001	Bernhard Lungwitz	56.0609CIP	2253

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EXAMINER

TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 07/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,264

Applicant(s)

LUNGWITZ ET AL.

Examiner

Philip C Tucker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 12, 17 and 20-30 is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 11, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 13-16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

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DETAILED ACTION

Claim Objections

1. Claims 13-16 are objected to because of the following informalities: In claim 13, the analogous hydroalkyl, allyl or aryl aminocarboxylic acids are not hydroxyethylamino carboxylic acids as required by parent claim 12. Dependent claims fall herewith. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-9, 11, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahyanake (6258859 B1).

Dahyanake teaches a viscoelastic surfactant based fluid which comprises a zwitterionic surfactant within the scope of the present invention which can contain organic salts, inorganic salts, and other surfactants, such as alkyl benzene sulfonates (column 3, line 57 - column 4,

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line 25, column 50, line 50-52, column 9, lines 54-67). The inorganic salt can be present at levels of upto 30%, which would give a density within the scope of the present invention (column 6, line 63 - column 7, line 13). The fluids are useful in fracturing operations (column 1, lines 65-67). Dahayanake differs from the present invention in that an example of a salt concentration of as high as 30% is not specifically taught, and the use of sodium dodecylbenzene sulfonate or sodium dodecyl sulfate is not specifically disclosed. It would however be obvious to one of ordinary skill in the art to utilize an inorganic salt concentration of as high as 30%, given the teaching that such levels are useful for forming the viscoelastic fluid composition.

Furthermore, the alkyl benzene sulfonates and alkyl benzene sulfates are typically used in their sodium forms or potassium forms, and the use of sodium dodecylbenzene sulfonate or sodium dodecyl sulfate would be obvious to one of ordinary skill in the art, in view of the teaching of the use of C 10-14 alkyl benzene sulfonates and alkylsulfates by Dahayanake.

4. Claims 10, 12, 17, 20-30 are allowable over the art of record.

5. Applicants amendment and arguments have been considered. Applicants new claims which include a density of at least 12.5 ppg are deemed allowable over the art of record. Further consideration of Dahanayake results in new grounds of rejection, since it is believed that the teachings therein would render the sodium dodecylbenzene sulfonate and sodium dodecyl sulfate obvious to one of ordinary skill in the art. The sodium forms of the surfactants, such as shown at

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column 20 of Qu (6435277) of record, are typically used. A response was not made to the rejection of claims 12-16 under 35 USC 112, which is now presented in the form of an objection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tucker whose telephone number is (703) 308-0529. The examiner's normal working hours are 7:30am-4:00pm, Monday-Friday. If necessary SPE Robert Dawson may be contacted at 703-308-2340. For inquiries of a general nature call the receptionist at 703-308-0651. The group FAX no. is 703-872-9310. The **after final** fax no. Is 703-872-9311.

PCT-2723
July 23, 2003


PHILIP C. TUCKER
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